No. 87-416

In The
Supreme Court of the United States
October Term, 1987

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UNITED STATES CATHOLIC CONFERENCE

and

NATIONAL CONFERENCE OF CATHOLIC BISHOPS,
Petitioners,

v.

ABORTION RIGHTS MOBILIZATION, INC.,

and

JAMES A. BAKER, III, SECRETARY OF THE TREASURY, and
LAWRENCE B. GIBBS, COMMISSIONER OF INTERNAL REVENUE,
Respondents.

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On Certiorari to the Court of Appeals for the Second Circuit

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BRIEF AMICUS CURIAE OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., THE AMERICAN JEWISH CONGRESS, JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, THE LUTHERAN CHURCH-MISSOURI SYNOD, THE NATIONAL ASSOCIATION OF EVANGELICALS, THE SYNAGOGUE COUNCIL OF AMERICA, AND THE WORLDWIDE CHURCH OF GOD, IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

Whether an order holding a major religious body in civil contempt and imposing substantial fines for refusal to comply with massive discovery requests for sensitive internal church records should be vacated for want of subject matter jurisdiction because the plaintiffs lack standing, either as voters or as members of the clergy, to challenge directly the tax-exempt status of the religious body.

Whether a major religious body held in civil contempt may be denied standing as a witness to challenge the underlying jurisdiction of the federal court that ordered the discovery that triggered the contempt citation, on the view that "colorable" jurisdiction suffices to postpone consideration of the church's jurisdictional challenge until the requested discovery of the church's records is completed and the underlying action to revoke the tax-exempt status of the church is decided on the merits.

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STATEMENT OF INTERESTS

Amici curiae are major religious bodies in the United States or membership organizations concerned with the preservation of religious freedom. This brief is directed to the profound implications of this case for religious freedom. Every aspect of this case, including the substantive theory of the plaintiff's case, threatens core values of the Religion Clause. The autonomy and integrity of all religious bodies is threatened by conferring standing on private parties hostile to the moral teaching of a target church to litigate to revoke the exempt status of that religious body. (Part I, *infra*). The freedom of religious bodies is likewise threatened by denying appellate standing to a church held in civil contempt until the discovery of its internal records has been completed by hostile outsiders and a decision has been reached on the merits of the claims of these outsiders. (Part II, *infra*). Indeed, religious freedom suffers from the very court orders that the church is attempting to appeal in this case, for those orders purport to compel massive discovery of sensitive internal church records by ideological opponents of the church and to enforce the discovery order by a contempt citation imposing coercive fines on the church for its refusal to comply with the discovery order. (Part III, *infra*). From beginning to end, this case is a First Amendment nightmare. Amici hold widely varying views on the ethics of abortion, but are in concerted agreement on these First Amendment issues.

These First Amendment issues are adequately preserved in the record of this case. The petitioners, however, have chosen to present this case to this Court pri-

marily as a technical matter of standing, without focusing in detail on the claims arising under the Religion Clause. This Court may decide the case as the petitioners have presented it, but amici urge that it consider the standing issues in light of First Amendment considerations set forth in this brief. In a case so pervaded with sensitive issues arising under the Religion Clause, there is an enormous risk of dictum which may later be taken to preclude or limit further consideration of these issues. This brief informs this Court of the First Amendment implications of this case.

If this Court decides the case on the narrow ground suggested by the petitioners, amici urge this Court to limit its opinion carefully by reserving the question of intrusive civil discovery of the internal records of a religious body, and by refraining from dicta that would serve in any way to diminish the associational privacy of religious bodies by broadening the access of hostile outsiders to their internal records. If this Court decides the case on the narrow ground suggested by the petitioners, amici likewise urge this Court to reserve the question of the imposition of excessive fines on a religious body, and to refrain from any dicta that would serve to diminish the legitimate autonomy of religious bodies by expanding judicial power over these bodies where less restrictive alternatives (e.g., certification of the ruling on the standing of the plaintiffs for an interlocutory appeal) would serve any interest which may be asserted on behalf of orderly administration of justice and would obviate inquiry into whether the interest in behalf of the contempt order in this case was truly "compelling."

Counsel for petitioners and respondents have granted consent to the filing of this brief. The particular statement of interest of each amicus participating in this brief is contained in the appendix.

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SUMMARY OF ARGUMENT

Amici are interested in the correct resolution of four mistakes in this case affecting religious freedom. The first two mistakes relate to the legal standing of the petitioners and the private respondents. The other two mistakes concern the threat to the autonomy and integrity of all religious bodies posed by the court order of discovery of sensitive internal records of a major religious denomination and by the imposition of coercive fines on that church in unprecedented severity. None of these constitutional errors is "harmless."

The first standing mistake was the ruling of the district court that the private respondents (plaintiffs below) *have standing*, either as voters or as members of the clergy, to challenge the tax-exempt status of a major religious organization. This mistake enlarges the power of the judiciary and diminishes the role of the executive over the administration of federal tax policy in a manner directly contrary both to the requirements of the constitution and to the clear intent of Congress. (Part I)

The second standing mistake was the ruling of the court of appeals that the petitioners *lack standing* as witnesses to challenge the subject matter jurisdiction of

the federal court to enter a compulsory discovery order against a religious body, and to hold the church in civil contempt for its refusal to comply with the discovery order. This mistake bootstraps the governmental interest in efficient administration of criminal justice into an undifferentiated and unreviewable power over religious bodies in a civil suit, on a record where it is plain that the church had no legal mechanism available to it other than civil contempt in order to seek appellate review of the first standing mistake. (Part II)

Religious freedom was also jeopardized by the ruling of the district court requiring the petitioners to hand over to the plaintiffs *massive amounts of sensitive internal church records.* These records include confidential tax returns which the private respondents may not obtain from the federal respondents because Congress has expressly prohibited the executive from disclosing such information to anyone, let alone to the political adversaries of a not-for-profit religious organization. Religious freedom was also threatened by the raw judicial power of the district court in holding a major religious body in civil contempt and in imposing *fines in the amount of $100,000 per day on the church petitioners* for each day in which they refuse to comply with the court's compulsory discovery order. (Part III)

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ARGUMENT

I. THE SENSITIVE TASK OF REVOCATION OF THE TAX-EXEMPT STATUS OF A NOT-FOR-PROFIT RELIGIOUS ORGANIZATION SHOULD NOT BE ENTRUSTED TO PRIVATE THIRD PARTIES WHO MAY ACT MERELY BECAUSE THEY DO NOT AGREE WITH THE RELIGIOUS MESSAGE OF THE EXEMPT ORGANIZATION.

Although this case is fraught with First Amendment difficulties of the highest magnitude, the standing issues are the principal matters now before this Court, and it is understandable that this Court may seek a narrow ground for disposing of this case. In the view of the amici, however, the correct disposition of these standing issues requires at least an awareness of the pernicious consequences to religious freedom and to the associational rights of religious communities which flow from the rulings of the courts below. The underlying reason for the petitioners' reluctant decision to allow itself to be held in contempt of court is its conviction, based on the advice of its legal counsel, that the district court lacks jurisdiction over the subject matter, and therefore is without power to enforce the subpoenas duces tecum of the plaintiffs, private third parties who attack the tax-exempt status of the church. In the petition for certiorari and brief in opposition, the parties discuss this case as though it presented an unadorned matter of standing. Amici urge that this Court view these standing matters through First Amendment lenses, in order to see the full seriousness of allowing the federal courts to be used by opponents of religious bodies to strip them of their exempt status.

The first standing mistake was the ruling of the district court that the private respondents (plaintiffs below) *have standing*, either as voters, *Abortion Rights Mobilization, Inc. v. Regan*, 544 F. Supp. 471, 480-482 (S.D.N.Y. 1982), A. 69a-74a, or as members of the clergy, id. at 478-479, A. 67a-69a, to challenge the tax-exempt status of a major religious denomination, on the view that the federal respondents had allegedly "denigrated" the plaintiffs' religious beliefs and "frustrated" their ministry by giving "tacit government endorsement of the Roman Catholic Church view of abortion."

The second standing mistake was the ruling of the court of appeals that the petitioners *lack standing* as witnesses to seek appellate review of the jurisdiction of the federal court to enter a compulsory discovery order massive in scope against a religious body, and to hold the church in civil contempt for its refusal to comply with the discovery order. (See II, *infra*). Both of these standing errors represent significant departures from the binding precedents of this Court,[1] and are addressed fully in the briefs of the petitioners and the federal respondents.[2] Al-

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[1] See, e.g., *Allen v. Wright*, 468 U.S. 737 (1984); *Valley Force Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982); *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976); *United States v. Richardson*, 418 U.S. 166 (1972); and *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1972).

[2] In this case the federal respondents agree with the petitioners that the district court lacks subject matter jurisdiction. Indeed, the government has sought review of this very issue in the court of appeals and this Court on repeated occasions. See, e.g., Briefs of the United States in Nos. 86-157 and 86-162.

though it is extremely unlikely that the petitioners in this particular case will modify their teaching on abortion, no matter what the outcome of the lawsuit, amici urge that the very threat of such litigation may impact severely on the ability of not-for-profit religious organizations to communicate their varying messages on matters of public concern.[3] For these reasons amici urge this Court to reverse the decisions below on the standing issues.

A. The District Court erred in Conferring Standing on the Private Respondents (Plaintiffs below) to Challenge the Exempt Status of a Major Religious Organization on the Grounds that the Plaintiffs are either Voters or Members of the Clergy.

This Court has clarified repeatedly that in order to have standing, a plaintiff must demonstrate actual or threatened injury that can fairly be "traced to the challenged action" and "is likely to be redressed by a favorable decision," *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976). Like this case, *Simon* involved a challenge to the tax-exempt status of third party organizations. In *Simon* this Court refused to find a causal link between a revenue ruling under I.R.C. § 501(c)(3) and a reduction in services to indigents. The *Simon*

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[3] As is evident from the statement of interests of the amici, some of the amici agree with the position of the petitioners on the abortion issue and others do not. Nonetheless, all of the amici are of one mind that in the American constitutional order a religious body must be free to address matters of public policy without being subjected on that account to harassing litigation by outsiders. For example, the American Jewish Congress and the Presbyterian Church should not be exposed to costly litigation by right to life advocates who might, under the theory advanced by the plaintiffs in the instant case, attack the exempt status of these organizations for allegedly excessive involvement in the political order on the opposite side of the abortion issue.

Court ruled that "[i]t is purely speculative whether the denials of service specified in the complaint fairly could be traced to petitioners' encouragement or instead result from decisions made by the hospitals without regard to the tax implications," Id. at 42-43. In *Allen v. Wright*, 468 U.S. 737 (1984), this Court held that even if a plaintiff has sustained an injury, standing is still deficient where "the injury alleged is not fairly traceable to the Government's conduct . . . challenge[d] as unlawful." Id. at 757. The *Allen* Court reasoned that it was "entirely speculative whether withdrawal of the tax exemption of racially discriminatory schools would have any impact on the ability of respondents' children to receive a desegregated education." Id. at 758.

(i) Voter Standing

Ignoring the dictates of *Simon* and *Allen*, the district court conferred standing on the plaintiffs in their capacity as voters, on the view that they have somehow been disadvantaged by the federal respondents' alleged "preferential treatment" of the church. The fallacious premise for this view is that taxed contributions translate into less voting power than non-taxed contributions. This analysis is flawed for two reasons. First, the plaintiffs have not experienced a cognizable injury in their capacity as voters. The actual voting power of each individual plaintiff at the polling place is not in the least restricted by campaign activities, whether conducted by taxed or tax-exempt organizations. The plaintiffs' votes are no less significant than those of other voters. *Baker v. Carr*, 369 U.S. 186, 208 (1962).

Second, even if it were assumed that the plaintiffs in this case had suffered some palpable injury to their rights

of franchise, the injury was not caused by the actions of the government, as it was in *Baker v. Carr, supra*. The injury claimed is the purported "added influence" that the Catholic church has because of deductible contributions which it may spend on campaigns opposing abortion. This claimed injury is actually traceable neither to the federal respondents nor even to the petitioners, but to third party taxpayers who choose voluntarily to make charitable contributions to the petitioners. It is purely conjectural to believe that taxing these charitable gifts will in any significant way diminish voluntary giving to that church.[4] It is still more speculative to imagine that taxing these gifts would in any significant way decrease that church's efforts to influence abortion policy in this country, for the church's campaign against abortion is grounded in sincerely held religious beliefs. Because the claimed injury to voting rights is not cognizable injury which is traceable to governmental action or redressable by a court order, it is insufficient to confer standing on the private respondents in their capacity as voters to challenge the exempt status of the petitioners.

The remedy sought by the plaintiffs as voters, moreover, does not advance the First Amendment goal of affording more voices to be heard in our democracy. To the contrary, it seeks to penalize those who espouse a viewpoint on a public controversy different from that of the plaintiffs, and thus would have the effect of diminishing the flow of information to voters and to elected represen-

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[4] The hypothetical character of the plaintiffs' claim is underscored by the fact that the majority of taxpayers (60.8% in tax year 1985) do not itemize charitable contributions, but prefer to take the standard deduction. *IRS Statistics of Income Division Bulletin* 1 (Winter 1986-87). With the increase of the standard deduction in the Tax Reform Act of 1986, tax analysts expect a further decrease in the number of taxpayers who itemize.

tatives. Allowing voters to resort to the courts to revoke the exempt status of a religious body because of its dissemination of views on matters of public concern has the inevitable effect of chilling the expression of moral views which have ramifications in public policy choices. Although a sound argument may be advanced for allowing voters greater access to the judiciary in order to ensure *fuller participation in the political process by all*, see, e.g., J. Ely, *Democracy and Distrust* 105-125 (1980), it makes no sense to expand the power of the nonpolitical branch to issue rulings that have the effect of chilling or *diminishing the pluralistic character of debate* on matters of public concern. For this reason as well, this Court should reverse the conclusion that plaintiffs have standing as voters to challenge the exempt status of the petitioners.

(ii) Clergy Standing

The district court likewise erred in conferring standing on the clergy plaintiffs on the view that the protected activity of the petitioners violates the rights of these clergy plaintiffs secured under the Establishment Clause. This conclusion is erroneous for three reasons. First, the mere fact that a plaintiff seeks relief under the Establishment Clause does not mean that the normal requirements for standing are diminished. See, e.g., *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464 (1982). Important as the prohibition against governmental establishment of religion is in our society, it nonetheless remains true that not "all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 227 (1974).

Second, a plaintiff must show direct and palpable injury caused by the illegal conduct of the defendant, not

mere psychological distress that one's view of the constitutional order has been offended. In *Valley Forge* the Court held that the plaintiffs lacked standing because they "fail[ed] to identify any personal injury suffered by them *as a consequence* of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees." *Id.* at 485. Similarly in *Allen, supra*, this Court denied standing to black parents who claimed that they suffered "stigmatic" injury because of the tax-exempt status of segregated private schools, on the view that the alleged injury was too abstract to fulfill standing requirements. 468 U.S. at 754-56.[5]

Mere mechanical pleadings raising claims of abstract stigmatic injury are not enough to expose a not-for-profit religious organization to costly litigation initiated by its ideological adversaries. The claimed injury to the clergy in this case is as intangible as the "psychological" injury found insufficient to confer standing in *Valley Forge* and the "abstract stigmatic" injury addressed in *Allen*. The extent of the "injury" to these members of the clergy is easy to assert, but difficult if not impossible to measure. Thus it is hard to imagine how the ability of the clergy plaintiffs to minister to their flocks could be helped in any significant way by the outcome of this liti-

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[5] Although *Allen* seems plainly to require the result that the private respondents lack standing, the district court in *Abortion Rights Mobilization, Inc. v. Regan*, 603 F. Supp. 970 (S.D.N.Y. 1985), A. 93a-102a, expressly declined to modify its earlier ruling on voter and clergy member standing in the light of *Allen*, or even to certify the standing matter for purposes of an interlocutory appeal by the petitioners. The district court's refusal to certify its rulings on this matter for interlocutory appeal triggered the contempt proceedings as the only legal mechanism available to the petitioners to challenge the jurisdiction of the court to order massive discovery of sensitive internal church records. See Part III B, *infra*.

gation, for the plaintiffs are not seeking restoration of tax-exempt status for themselves, but the revocation of the exempt status of a third party.

Third, the substantive theory of the plaintiffs' case is based on the view that the severe restrictions on political speech imposed by I.R.C. § 501(c)(3) on exempt organizations are required by the First Amendment. Amended Complaint, par. 16 & 17.[6] It is, however, contrary to the clear teaching of this Court, *Walz v. Tax Commission*, 397 U.S. 664 (1970), to suppose that the grant of tax-exempt status to a religious body constitutes, as the district court imagined, impermissible "government endorsement of the Roman Catholic Church view of abortion," A. 67a, or "official approval of an orthodoxy." A. 68a.[7] And it is equally fanciful to suppose that the federal

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[6] In their brief before the court of appeals, plaintiffs urged that this result is required by the holding in *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). Congress, however, expressly declined to give its approval or disapproval to the rationale for § 501(c)(3) in *Christian Echoes*, Tax Reform Act of 1976, § 1307(b)(3), Pub. L. 84-455, 90 Stat. 1722.

Plaintiffs also rely on this Court's ruling in *Regan v. Taxation With Representation*, 461 U.S. 540 (1983), and *Cammarano v. United States*, 358 U.S. 498 (1959). Neither of these two tax cases, however, involved a religious body attempting to communicate its religious message on matters of public concern. *Taxation With Representation*, moreover, is not directly controlling because the "saving" feature of I.R.C. 501, viz., 501(c)(4), is of no practical use to a preacher, who cannot be required to announce at the beginning of a sermon whether he is speaking for a 501(c)(3) church or a 501(c)(4) clone, let alone to switch birettas or yarmulkes in the midst of such a sermon.

[7] In *Walz* this Court sustained tax exemption for property used exclusively for religious worship, on the view that, far from establishing religion, this practice avoided governmental interference with religion. In addition, the Court expressly noted: "Adherents of particular faiths and individual churches frequently take strong positions on public issues including, as this

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respondents have impliedly "denigrated" the religious beliefs of the plaintiffs who are members of the clergy or that the Secretary of the Treasury and the Commissioner of the IRS have in any way "frustrated" the ministry of those plaintiffs. On this record it is all too plain who is attempting to frustrate whom. It is the plaintiffs whose constitutional theory undermine the necessary degree of flexibility or "room for play in the joints" deemed appropriate in *Walz*, 397 U.S. at 669.[8] Although the plaintiffs who are clergy members may subjectively feel that their beliefs are "denigrated" by the tax-exempt status of the Catholic church, that is not enough to establish standing under this Court's teaching in either *Simon* or *Allen*. It is, moreover, entirely speculative to conclude, as the district court did, that the revocation of the tax-exempt status of a religious body necessarily marks its decline in

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case reveals in the several briefs amici, vigorous advocacy of legal or constitutional positions. Of course, churches as secular bodies and private citizens have that right." Id. at 670.

[8] It is difficult to conceive of greater rigidity than to give to any opponent of the teachings of a religious body access to federal court to seek an injunction to compel the revocation of that church's exemption from the payment of federal income tax and a whole series of cascading events flowing from the loss of that status. With the loss of exempt status under I.R.C. § 501(c)(3), a religious body would not only have to pay taxes on all net income, but all contributions to the church would no longer be deductible by the contributing taxpayer for purposes of federal income tax, I.R.C. § 170(c)(2)(D), estate tax, I.R.C. §§ 2055(a)(2) and 2106(a)(2)(A)(ii), and gift tax, I.R.C. § 2522(a)(2). In addition, most of the states have parallel provisions in their tax codes which incorporate I.R.C. § 501(c)(3) by reference, for purposes of determining the exemption of a religious body from payment of a wide variety of state and local taxes. Some states, moreover, predicate their regulatory authority over an entity seeking charitable contributions on the entity's federal tax-exempt status, conferring, for example, an exemption from annual reporting requirements to groups which are exempt under § 501(c)(3).

influence; this belief ignores the myriad of factors that influence the moral vitality of a religious community.

Like others who favor abortion, plaintiffs have First Amendment protection in advocating their views. As the diversity among religious bodies included among the amici demonstrates, the moral teaching of various religious bodies on abortion has not been contingent upon the teaching of the Catholic church on this matter, let alone on the even more attenuated question of whether that church enjoys tax-exempt status. The implication to the contrary in the district court's ruling in *ARM I* merely emphasizes the need for rules of standing that preclude the use of the federal courts for attacking religious organizations.

B. The Private Respondents Lack Statutory Standing because Congress has Entrusted to the Federal Respondents the Sensitive Task of Granting and Revoking the Tax-exempt Status of Charitable Organizations.

The standing requirement limits the jurisdiction of federal courts "to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process," *Flast v. Cohen*, 392 U.S. 83, 97 (1968), and then only if Congress has conferred jurisdiction. Although plaintiffs have not claimed statutory standing, the basic posture that they occupy in this case is that of a private attorney-general seeking to compel enforcement of the tax law against a third party. Far from conferring statutory standing on the plaintiffs in this lawsuit, however, Congress has given several indications in the tax code that support the opposite conclusion.[9] In short, Congress plainly intended

[9] In the Anti-Injunction Act, I.R.C. § 7421(A), Congress prohibited suits to restrain assessment or collection of any tax,

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the administration of the code, including the granting and revocation of exempt status under § 501(c)(3), to be within the discretion of the federal respondents over whom Congress has a great deal of control through the oversight process, rather than within the boundless imagination of plaintiffs seeking to enforce their notions of tax equity in the federal courts.

The district court's view of standing, however, undermines the express intent of Congress by allowing private parties and the federal courts to usurp the role of both the legislative and executive branches, contrary to this Court's teaching in *Valley Forge* that Article III power is "not an unconditioned authority to determine the constitutionality of legislative or executive acts." 454 U.S. at 471. It is likewise clear under *Valley Forge* that the plaintiffs do not have "license to roam the country in search of governmental wrongdoing and to reveal their discoveries in federal court." 454 U.S. at 487. This Court should reemphasize this teaching here, lest fundamental rights of religious autonomy be exposed to attack through lawsuits by hostile outsiders.

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whether brought by a taxpayer or, as here, by a third party. Congress has delegated the administration and enforcement of the tax laws exclusively to the Secretary and the Commissioner. I.R.C. § 7801(a). In addition, Congress gave to the federal respondents the power to "prescribe all needful rules and regulations for the enforcement of" those laws. I.R.C. § 7805(a). And Congress reserved for itself the task of overseeing the enforcement of the revenue laws by creating a Joint Committee on Taxation to investigate the administration, operation, and effects of the tax system (I.R.C. §§ 8001-8023). These provisions reflect congressional intent to operate the tax system within the legislative and executive branches. Congress, moreover, has expressly mandated that the IRS maintain the confidentiality of tax records, I.R.C. § 6103; and out of concern for the delicate character of religious freedom, Congress has expressly limited the power of the IRS to conduct audits of church bodies. I.R.C. § 7611.

Even when suits to compel the executive branch to undertake enforcement committed to its discretion are "premised on allegations of several instances of violations of law, [they] are rarely if ever appropriate for federal-court adjudication." *Allen*, 468 U.S. at 759-760. Noting that an agency decision regarding enforcement proceedings "has long been regarded as the special province of the Executive Branch, inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.' U.S. Const., art. II, § 3," *Heckler v. Chaney*, 470 U.S. 821, 832 (1985), this Court has emphasized that executive agency decisions *not to enforce* are characteristically unsuitable for judicial resolution because this discretionary choice "often involves a complicated balancing of a number of factors which are peculiarly within its expertise." Id. at 831.[10] One of the reasons why Congress has entrusted delicate decisions concerning the exempt status of religious organizations to the federal respondents is that they take an oath of office to support the constitutional limits on their own authority. Private litigants with their own agenda are under no such obligation to take into account the protections of the First Amendment. If this case is any indication, the likelihood that disgruntled third parties will be sensitive to the free speech and free exercise concerns of non-profit organizations they oppose is slim. To the contrary, the probability

[10] Unlike the district court in this case, this Court and the lower federal courts typically defer to determinations of the IRS concerning discretionary applications of the provisions of the tax code. See, e.g., *National Muffler Dealers Ass'n., Inc. v. United States*, 440 U.S. 472 (1979); *Tax Analysts and Advocates v. Blumenthal*, 566 F. 2d 130 (D.C. Cir. 1977), cert. denied, 434 U.S. 1086 (1978); *American Society of Travel Agents, Inc. v. Blumenthal*, 566 F. 2nd 145 (D.C. Cir. 1977), cert. denied, 435 U.S. 947 (1978).

that religious organizations will become the target of third parties hostile to their religious perspective is high.[11]

The standing rule adopted by the district court could easily open up the floodgates to litigation against churches by those hostile to their mission or ideas. See, e.g., *Khalaf v. Regan*, 85-1 U.S. Tax Case Par. 9269 (D.D.C. 1985) (dismissing on standing principles effort of anti-zionist organization to revoke exempt status of Jewish charitable organizations because of their support of Israel); *American Society of Travel Agents, Inc. v. Blumenthal*, 566 F. 2d 145 (D.C. Cir. 1977), cert. denied, 435 U.S. 947 (1978) (dismissing on standing principles attack on exempt status of American Jewish Congress by business competitors). The potential for mischief of this sort, moreover, is compounded by the suggestion in *Bob Jones University v. United States*, 461 U.S. 574 (1983), that an exempt organization may lose its exempt status by failing to conform with "public policy," id. at 586, or by failing to "be in harmony with the public interest" id. at 592; but see at 606-612 (Powell, J., concurring; rejecting suggestion that "primary function of exempt organizations is to act on behalf of the Government in carrying out governmentally approved policies").

The district court's approach to standing, moreover, is not limited to religious not-for-profit organizations, but could readily affect exempt charitable organizations which are secular in character. For example, a member of the Ku Klux Klan who is a registered voter could sue the

[11] Religious organizations may on occasion quarrel with the IRS over issues of governmental intrusion into areas deemed protected under the Religion Clause. See, e.g., D. Kelley, ed., *Government Intervention in Religious Affairs* (1982). But at least the known "devil" is better than unknown private adversaries whose name is "legion."

Secretary of the Treasury to revoke the exempt status of the NAACP if the civil rights education fund were to participate in voter education deemed impermissible under the restrictive regulations in Rev. Rul. 78-248 (construing § 501(c)(3) to prohibit distribution of accurate information to voters if the voter guide focuses on a single issue such as land conservation). Similarly, opponents and proponents of gun control could use the courts rather than the halls of Congress and other legislative chambers to carry on their debates. Even if their suits were ultimately dismissed on the merits, they would have succeeded in obtaining valuable information about their opponents that would otherwise be unavailable to them.

As this record illustrates, significant harm to religious freedom may result from subjecting religious bodies to inquiries which violate their legitimate autonomy. (Part III, *infra*). See Laycock, "Towards a General Theory of the Religion Clauses," 81 Colum.L.Rev. 1373 (1981). The cost of defending such suits, moreover, represents a significant diversion of funds earmarked for charitable works. None of the amici construe the biblical command to feed the hungry (e.g., Isaiah 58:7; Matt. 25:35) to refer primarily to lawyers. At the very least, such diversion of funds cannot be justified on the basis of protecting litigants whose tax liability is not at issue, and will not be affected by the outcome of the litigation. For these reasons this Court should reverse the district court's erroneous ruling on standing.

II. WHERE A MAJOR RELIGIOUS BODY IS HELD IN CIVIL CONTEMPT AS A WITNESS IN EXEMPTION-REVOCATION PROCEEDINGS INITIATED BY OUTSIDERS HOSTILE TO ITS MESSAGE ON A MATTER OF PUBLIC CONCERN, THE CHURCH HAS STANDING TO SEEK APPELLATE REVIEW OF THE UNDERLYING JURISDICTION OF THE DISTRICT COURT TO ORDER DISCOVERY OF SENSITIVE INTERNAL DOCUMENTS.

The second standing mistake was the ruling of the court of appeals that the petitioners *lack standing* as witnesses to challenge the subject matter jurisdiction of the federal court to enter a compulsory discovery order against a religious body, and to hold the church in civil contempt for its refusal to comply with the discovery order. *In re United States Catholic Conference*, 824 F. 2d 156 (2d Cir. 1987). A. 1a-43a.[12] In reaching this result, the court of appeals virtually ignored the recent teaching of this Court in *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 106 S.Ct. 1326 (1986), that "*every* federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a case under review. . . .'" 106 S.Ct. at 1331 (emphasis added). Failing to distinguish an appeal from a contempt citation and a dilatory interlocutory appeal, the court of appeals asserted that the *Bender* rule is inapplicable to interlocutory appeals. The court of appeals devised a new rule of standing, according to which the petitioners' challenge to the power of the district court to or-

[12] On this record it is plain that subjecting itself to a civil contempt citation was the only available legal mechanism to seek appellate review of the first standing mistake "before undertaking any burden of compliance with the subpoena." *United States v. Ryan*, 402 U.S. 530, 533 (1971). See note 5 *supra*.

der massive discovery of the sensitive internal documents of a major religious body must fail if the appellate tribunal finds a modicum of "colorable" jurisdiction in the lower court.

The court of appeals justified this conclusion by extensive reliance on *Blair v. United States,* 250 U.S. 273 (1919), a case which did not involve a religious body, but a challenge to the authority of the grand jury by a crucial witness in a criminal investigation. Whatever the need for the *Blair* rule in the special context of grand jury investigations, it makes little sense to extend the rule into an undifferentiated and unreviewable power of private plaintiffs over religious bodies in a civil suit, especially where the government does not assert the interest at issue in *Blair.* Even if this case were a criminal prosecution of a bogus "church," the normal rule for the judiciary would be to defer to the discretion of the executive in conducting the prosecution. See, e.g., *United States v. Cox,* 342 F. 2d 167 (5th Cir. 1965) (en banc), cert. denied, 381 U.S. 935. But this is not a case in which the government is aligned against a religious body because of an alleged violation of the tax code. See, e.g., *Bob Jones University v. United States,* 461 U.S. 574 (1983). It is a case in which private parties seek to use the federal courts to inflict a penalty on a major religious body for the evident reason that they disagree with the moral teaching of that church on a controversial matter of public concern. Under these circumstances and in the light of *Heckler v. Chaney, supra,* this case is hardly an apt vehicle for extending the reach of the *Blair* rule to religious bodies which choose to speak out on matters of conscience that are controversial in nature.

III. RELIGIOUS FREEDOM IS THREATENED WHEN FEDERAL COURTS DENY ANY MEANINGFUL REVIEW OF SUBSTANTIAL FINES IMPOSED ON A CHURCH FOR REFUSING TO DISCLOSE SENSITIVE INTERNAL DOCUMENTS RELATING TO PASTORAL PLANS FOR CONSTITUTIONALLY PROTECTED MORAL ADVOCACY ON MATTERS OF PUBLIC CONCERN.

A. Communicating sincerely held religious convictions on matters of public concern is protected activity.

In the view of the private respondents, the severe restrictions on political speech imposed by I.R.C. § 501(c)(3) on exempt organizations are required by the First Amendment. Amended Complaint, par. 16 & 17. The underlying theory of the plaintiffs' case is that they must vindicate rights secured under the Establishment Clause because the federal respondents have failed to do so. In addition to the standing difficulties noted above, the major flaw with this theory is that this Court has clearly announced that, for Establishment Clause purposes, an exemption of religious bodies from the payment of taxes does not violate the First Amendment. *Walz v. Tax Commission,* 397 U.S. 664 (1970).[13] In disposing of this case, this Court need not and, indeed, should not address the plaintiffs' contention that § 501(c)(3) is constitutionally mandated. If, however, this Court deems it prudent to discuss the constitutionality of § 501(c)(3) in dictum, amici urge that no truly compelling governmental interest supports these statutory restraints. To the contrary, in order to safeguard the functioning of our democracy, the con-

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[13] Contrary to the suggestion of the private respondents, this ruling was not disturbed in *Taxation with Representation, supra.*

stitution should foster greater freedom of political speech rather than its inhibition or suppression.[14]

It is well settled that any statute that significantly burdens free speech rights may be sustained only on a showing by the government that the statute serves a truly "compelling state interest" and that the means chosen by the government to achieve this end is the alternative which is the least restrictive of cherished free speech rights. See e.g., *Hobbie v. Unemployment Appeals Commission*, 480 U.S. —, 107 S.Ct. 1046, 1049 (1987). It is also well settled that religious bodies are afforded additional constitutional protection precisely because of their religious character. The protection of the Free Exercise Clause may be invoked only by persons or groups whose sincerely held *religious* tenets are burdened by governmental action. See, e.g., *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Thomas v. Review Board*, 450 U.S. 707, 717-718 (1981). In the leading decision directly relating this teaching to tax benefits, *Speiser v. Randall*, 357 U.S. 513 (1958), this Court stated:

> It is settled that speech can be effectively limited by exercise of the taxing power. . . . To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech. *Id.* at 518.

Thus, far from being constitutionally compelled by the First Amendment, the restrictions on the political speech

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[14] In another case before this Court during this Term amici have expressed their views that the Religion and Free Speech Clauses afford substantial protection against extensive governmental regulation of a religious body that chooses to announce sincerely held religious beliefs directly relating to matters of public concern. See Amicus Brief of Baptist Joint Committee on Public Affairs et al., in *Bemis Pentecostal Church v. State*, app. pending, No. 87-317.

of religious organizations in § 501(c)(3) are themselves vulnerable to constitutional attack because they are by no means the alternative least restrictive of their rights secured under the Religion Clause and the Free Speech Clause. Indeed, it is difficult to imagine a restriction more total than the absolute prohibition on any participation by a 501(c)(3) organization in a political campaign, whether on behalf of or in opposition to a candidate for public office. See e.g., IRS Exempt Organizations Handbook (IRM 7751) § 3(10)1; and see Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii). It is likewise hard to imagine that IRS rulings virtually prohibiting voter education efforts by exempt organizations on topics of concern to the organization, see, e.g., Rev. Rul. 78-160, 1978-1 C.B. 153, revised by Rev. Rul. 78-248, 1978-1 C.B. 1545, and Rev. Rul. 80-282, 1980-2 C.B. 178, would pass muster in judicial review that took seriously the mandate of *New York Times v. Sullivan*, 376 U.S. 254 (1964), that debate on issues of public concern must be "uninhibited, robust, and wide-open." Id. at 270. See also *McDaniel v. Paty*, 435 U.S. 618, 640 (1978) (Brennan, J. concurring); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776-778 (1978); and *Widmar v. Vincent*, 454 U.S. 263 (1981); Caron and Dessingue, "I.R.C. § 501(c)(3): Practical and Constitutional Implications of 'Political' Activity Restrictions," 2 J. of L. and Politics 169 (1985) and literature cited id. at 180, n. 40, at 181, n. 41, and at 183 n. 54.

Not all of the amici have taken a position on the constitutionality of the restraints on religious organizations imposed in § 501(c)(3). All of the amici, however, have from time to time engaged in public communication of sincerely held religious convictions on matters of public concern. For example, amici and the representatives of a

host of other denominations and religious bodies are called upon regularly to express the views of religious groups on a wide variety of social and political issues with pressing ethical components. In testimony before the House Ways and Means Committee in 1972, Dr. J. Elliott Corbett of the United Methodist Church entered into the record of these hearings a policy declaration of his church which bespeaks the impossibility of any total severance of religion and politics in our society:

> "We believe that churches have the right and the duty to speak and act corporately on those matters of public policy which involve basic moral or ethical issues and questions. Any concept of church-government relations which denies churches this role in the body politic strikes at the very core of the religious liberty. The attempt to influence the formation and execution of public policy at all levels of government is often the most effective means available to churches to keep before modern man the ideal of a society in which power [is] made to serve the ends of justice and freedom for all people." *Legislative Activity by Certain Types of Exempt Organizations*, Hearings Before the House Ways and Means Committee, 92d Cong., 2d Sess. at 303, 305 (1972).

In a similar vein a representative of the National Jewish Community Relations Advisory Council (NJCRAC) generally supported participation of religious organizations in legislative matters:

> Each of the affiliates of the NJCRAC regards its program as an expression of the tenets of the Jewish faith which it is organized to advance. Their activities are inspired by the Prophets' mandate to pursue justice. They believe that mandate governs man's life in all its aspects and requires those who adhere to the principles of Judaism to let their views be heard in support of justice for all. . . . The members of these organizations have banded together because they are Jews and believe that they have a responsibility to express a Jewish point of view. . . . Thus, their activity is a form of religious expression. *Id.* at 99.[15]

If this Court addresses the issue of the constitutionality of § 501(c)(3) at all, it should at the very least acknowledge that the permissibility of the restraints on free speech found in this statute of recent vintage is an open question, as applied to a protected religious organization engaging in dissemination of its religious message.

B. The massive scope of requested discovery threatens the autonomy of religious organizations.

The means selected by the plaintiffs to achieve their goal in this case includes sweeping discovery requests that threaten the integrity and autonomy of religious bodies. The standing issue is intimately connected with the threat to religious autonomy posed by the discovery requests, for a court without jurisdiction over the subject matter clearly lacks authority to enforce subpoenas for production of documents, whether the subpoenas are narrow or broad. Amici are particularly troubled that this case might turn into an inadvertent precedent damaging the autonomy of religious bodies. Hence amici urge this Court to focus particular attention on the intrusive character of the excessively broad discovery requests in this case, and on the potential chilling effect that granting such requests entails for similarly situated religious bodies.

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[15] See also Statement of the Baptist Joint Committee on Public Affairs, id. at 282; Statement of the United States Catholic Conference, id. at 307-312. See also Statement of the Baptist Joint Committee on Public Affairs, in *Influencing Legislation by Public Charities*, Hearing Before the House Ways and Means Committee, 94th Cong., 2d Sess. (1976); Statement of the Lutheran Council in the U.S.A., id. at 75-76; Statement on Behalf of the National Council of Churches of Christ in the U.S.A., id. at 81-82; and Statement of the United States Catholic Conference, id. at 90.

Even if the district court had jurisdiction over the subject matter because at least some of the plaintiffs have standing to sue the defendants, the district court nonetheless erred in ordering massive compulsory production of internal church documents to a private third party and extensive depositions of church officials and employees.[16]

In the view of amici, the plaintiffs' discovery requests are seriously intrusive upon the autonomy and integrity of religious bodies. In the process of attempting to prove their case on the merits, attorneys for the plaintiffs have proceeded against the petitioners with discovery requests that seek to examine in depth and in great detail virtually all significant relationships between Roman Catholic institutions at all levels and the entire political process. The subpoenas duces tecum addressed to the petitioners demand production of voluminous materials, including internal church discussions regarding the formulation and implementation of the Catholic Bishops' position on one of the most vexing and fundamental religious and political issues of our time, abortion.

If this Court sustains these subpoenas, the impact of this decision on the amici and similarly situated religious bodies could be staggering. There would be no principled way to differentiate between the plaintiffs in this case and opponents of another religious body suing the government to secure a judicial order revoking the tax-exempt status of that body the cause of its political involvement on any number of the other issues designated by the Catholic Bishops as "pro-life" matters (e.g., nuclear war, capital punishment, adequate health care, foreign

[16] The subpoenas are described in the Petition for Certiorari, at 6-7, and more extensively in the Appellants' Brief before the court of appeals, at 9-12.

policy and immigration policies relating to Latin America or South Africa). Once such a plaintiff hostile to a church's moral teaching on any one of these themes had commenced an action like this case, the door would be wide open to dissipate the resources of a not-for-profit corporation dedicated exclusively to religious purposes. Congress surely never contemplated nor intended the result of costly litigation against religious bodies initiated by private third parties hostile to their moral teachings.

This Court, however, need not support the district court's order for such broad discovery against a non-party, for the plaintiffs' discovery rights are predicated upon the ground that its claims are not without merit. See, e.g., *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723 (1975). Federal courts have denied discovery altogether where no proof of facts in support of a claim would entitle the party seeking discovery to relief. See, e.g., *Westminster Investing Corp. v. G.C. Murphy,* 434 F.2d 521 (D.C. Cir. 1970). Plaintiffs ground their cause of action: (a) on the view that as registered voters they have suffered a diminution of the strength of their franchise because of alleged governmental "subsidy" of the petitioners, and (b) on the view that as members of the clergy their religious convictions have been "denigrated" by an official policy of preferential treatment of the petitioners over other religious bodies who disagree with the petitioners on the issue of abortion. As was argued above, neither of these claimed bases for standing is significantly different from the bases unsuccessfully asserted by the plaintiffs in *Allen v. Wright,* 468 U.S. 737 (1984).

For these reasons, the legal predicate underlying the plaintiffs' discovery requests is seriously flawed, and their subpoenas should not be enforced.

C. The penalties imposed on the petitioners are excessive because certification is an equally effective alternative less restrictive of religious autonomy.

It is well settled that religious bodies are afforded additional constitutional protection precisely because of their religious character. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The freedom of religious bodies to address many vexing social problems from a religious perspective should not be conditioned upon their compliance with overbroad and intrusive discovery orders. Nor should religious bodies be subjected to excessive sanctions for seeking appellate review of the underlying power of the court to issue such orders, unless the government can demonstrate that it has utilized the least restrictive means of achieving a truly compelling governmental interest. *Hobbie v. Unemployment Appeals Commission*, 480 U.S. —, 107 S.Ct. 1046, 1049 (1987); *Thomas v. Review Board*, 450 U.S. 707 (1981); *Sherbert v. Verner*, 374 U.S. 398 (1963). The requirement of a less restrictive alternative announced in *Sherbert* is all the more appropriate in this case, involving the contempt power, which should be enforced by the smallest sanction needed to be effective, or "the least possible power adequate to the end proposed." *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 231 (1821).

In this case, the district court plainly had an effective and less burdensome alternative readily available. All of the painful confrontation between the judiciary and a major religious body over the past two years could have been avoided by certifying the ruling on standing for purposes of interlocutory appeal under 28 U.S.C. § 1292(b). Where the delicate issue of religious freedom hangs in the balance, the refusal of the district court to certify his standing ruling, even after the plain teaching

of this Court in *Allen*, constitutes an abuse of discretion so significant that this Court should reverse the district court on this matter.

The permissibility of the contempt citation imposed upon the petitioners under the facts in this case and under free exercise standards is adequately preserved on this record, but this Court may likewise avoid a decision on this issue by focusing on the standing questions. In the event that this Court elects this path, amici urge this Court to make plain that the imposition of coercive fines of the magnitude in this case is a reserved question, and to refrain from any dicta that would serve to diminish the legitimate autonomy of religious bodies by expanding judicial power over these bodies where less restrictive alternatives (e.g., certification of the ruling on the standing of the plaintiffs for an interlocutory appeal) would serve any interest which may be asserted on behalf of orderly administration of justice and would obviate inquiry into whether the interest protected by the contempt order in this case was truly "compelling."

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CONCLUSION

For the reasons set forth in this brief, amici curiae urge this court to reverse the judgment of the court of appeals denying standing to the church witness to seek appellate review of a contempt citation, accompanied by coercive fines, that were imposed because of the church's refusal to comply with intrusive discovery requests for sensitive internal records. Amici likewise urge this court to correct the error of the district court in *ARM I* that any of the plaintiffs have standing.

Respectfully submitted,

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APPENDIX

STATEMENT OF INTERESTS OF INDIVIDUAL AMICI

The National Council of Churches of Christ in the U.S.A. [NCC] is a community of thirty-one religious communions numbering over 40 million members. Some of these communions would agree with the views expressed by the petitioners concerning the morality of abortion; some of them would disagree. All of them have agreed, however—through their representatives on the Governing Board of the NCC—in support of religious bodies and all citizen groups to speak and to act on questions of public policy without suffering state-imposed penalties or disabilities. The Governing Board of the NCC has specifically recommended that its member communions not impair the relationships of confidence and trust within the religious community by disclosing to outsiders "the names of contributors, members, constituents . . . [or] personnel files, correspondence or other confidential and/or internal documents or information." The NCC joins this brief in support of the right of a religious body to be free of governmental constraint to disclose such information to hostile outsiders.

The American Jewish Congress is a national organization of American Jews founded in 1918 to protect the civil, political, and religious rights of American Jews. It is exempt from taxation pursuant to I.R.C. § 501(c)(3). Although it was an early supporter of freedom of choice in abortion, and hence an opponent of the Roman Catholic position on abortion, it believes that the private respondents lack standing to challenge the church's tax-exempt status. To hold otherwise would expose tax-

exempt organizations to a campaign of intimidation by litigation.

James E. Andrews is the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), a national, Christian denomination with churches in all fifty states. It has approximately 3.1 million active members and approximately 11,700 congregations organized into 189 presbyteries and 20 synods. The General Assembly is the highest governing body of the church, meets annually, is composed of approximately 670 delegates known as commissioners, who are elected by the presbyteries. One-half of the commissioners are ordained clergy and the other half are ordained lay officers known as elders. This brief does not purport to reflect the views of all members of the church, but is based on policies decided by the General Assembly, or incorporated into the Constitution of the Presbyterian Church (U.S.A.) by vote of the presbyteries. The policies established by the General Assembly of the Presbyterian Church (U.S.A.) are not in agreement with the views of the petitioners with regard to matters of abortion rights and pro-life issues, but are in substantial agreement with the views on constitutional rights and religious liberty expressed in this brief.

The Baptist Joint Committee on Public Affairs [BJCPA] consists of representatives elected by each of eight cooperating Baptist conventions in the United States: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. These Baptist groups have nearly 30 million members and reflect the traditional Baptist concern for proper church-state relations. The BJCPA has as one of its mandates the obligation to respond "whenever Baptist principles are involved in, or are jeopardized through, governmental action." Among Baptists, the freedom of the church from entangling relationships with the government is a fundamental and sacred principle.

The Catholic League for Religious and Civil Rights [League] is a civil rights and anti-defamation organization, national in membership, dedicated to the defense of religious liberty and freedom of expression. Although the League does not purport to speak directly as the official voice of a religious body, this case raises substantial questions relating to central concerns of the League's members. When antagonists of a particular church invoke the power of the government to conduct far-reaching and intrusive examination of sensitive internal church documents, religious liberty suffers. When political opponents seek to penalize protected expressive activity crucial to effective church teaching on matters of public concern by maintaining costly and burdensome lawsuits, genuine freedom of expression is chilled and cannot flourish.

The Church of Jesus Christ of Latter-Day Saints [LDS Church] has an international membership in excess of 6 million members with general headquarters in Salt Lake City, Utah. There are in excess of 8,400 congregations in the United States. This brief does not purport to reflect the views of all members, but is based upon a policy decision made by the hierarchical general leader-

ship of the Church, viz., The First Presidency and The Quorum of the Twelve Apostles. Members of these leadership organizations are regularly sustained in their positions by the general Church membership. The preservation of religious freedom is a fundamental tenet of the LDS Church. The LDS Church is particularly concerned with the threat to religious freedom posed by the massive discovery of sensitive church records ordered by the district court in this case.

The Lutheran Church-Missouri Synod is the second largest Lutheran denomination in North America and the eighth largest Protestant body in the United States. It has approximately sixty-two thousand member congregations which, in turn, have approximately 2.6 million individual members.

The National Association of Evangelicals, located in Wheaton, Illinois, is a non-profit association of evangelical Christian organizations, including fifty thousand churches from seventy-eight denominations. It serves a constituency of 10 to 15 million people through its commissions and affiliates.

The Synagogue Council of America [SCA] is a coordinating body consisting of the organizations representing the three divisions of Jewish religious life: Orthodox, Conservative, and Reformed. It is composed of: Central Conference of American Rabbis, representing the Reformed Rabbinate; Rabbinical Assembly, representing the Conservative Rabbinate; Rabbinical Council of America, representing the Orthodox Rabbinate; Union of American Hebrew Congregations, representing the Reformed Congregations; Union of Orthodox Jewish Congregations of

America, representing the Orthodox Congregations; and United Synagogue of America, representing the Conservative Congregations. SCA takes no position on the merits of the underlying issue of abortion. It joins the brief solely to reverse the error of the lower courts on the questions of the standing of the petitioners and of the excessiveness of the penalty.

The present era of the Worldwide Church of God [WCG] was founded by the late Herbert W. Armstrong in 1933. Its doctrines and practices are based on a literal understanding of the Bible. WCG has approximately 330,000 members, co-workers, donors, and other adult affiliates. It has approximately 780 local congregations in 40 nations around the world, pastored by at least 1,400 ordained ministers. WCG is wary of detractors being vested with the power of the State to attack a church because dissident former members induced a court to appoint a receiver who took control of the administrative affairs of the WCG and all of its assets. At the time of hearing no evidence was introduced to support the inflammatory accusations in the complaint. Because WCG was the target of direct governmental interference with its autonomy and integrity, it is particularly sensitive to the threat to religious freedom posed by giving ideological opponents of religion free-wheeling access to the courts to pursue their agenda.
